

September 1, 2020

Mrs. Nancy J. Bozzato, Secretary Treasurer  
Committee of Adjustment  
Town of Pelham  
Fonthill, ON L0S 1E0

**Re: Minor Variance Application A6/2020P  
257 Chantler Road, Pelham**

Part Lot 4, Concession 12 Pelham as in BB65156 & Part Lot 5, Concession 12 Pelham as in AA14956  
Except Part 1, 59R-1827 & Part 1 59R-3827; Pelham  
**Roll No.** 2732 030 017 05000 / 2732 030 017 05300

The subject land is located on the north side of Chantler Road, lying east of Effingham Street, legally described above, and known locally as 257 Chantler Road in the Town of Pelham.

The subject land is zoned 'Agricultural' (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The minor variance application requests relief from:

- i. **Section 7.2 (e) "Minimum Side Yard"** to permit a minimum side yard of 3 m, whereas 46 m is required.

The proposal seeks to construct a 961 m<sup>2</sup> (10,344 ft<sup>2</sup>) barn for agricultural use being a Christmas tree farm.

### Applicable Planning Policies

#### Provincial Policy Statement (PPS) (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development, and sets the policy foundation for regulating the development and use of land. The PPS provides for appropriate development while protecting resources of Provincial interest, public health and safety, and the quality of the natural and built environment.

Section 3 of the *Planning Act* requires that decisions affecting planning matters "shall be consistent with" policy statements issued under the *Act*. The PPS recognizes the diversity of Ontario and that local context is important. Policies are outcome-oriented, and some policies provide flexibility provided that provincial interests are upheld. PPS policies represent minimum standards.

The Provincial Policy Statement (PPS) designates the subject land within the 'Prime Agricultural Area'. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. 'Prime Agricultural Areas' are defined as including associated Canada Land Inventory Class 4-7 lands as well as 'Prime Agricultural Lands' (Class 1-3 lands).

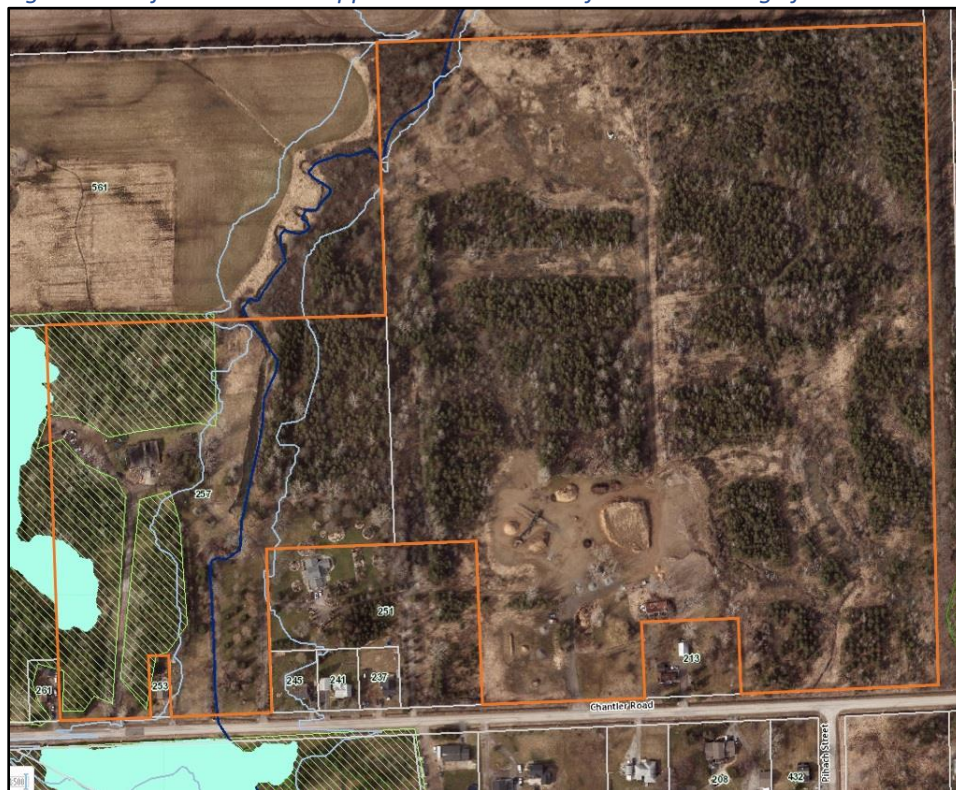
Policy 2.1 (Natural Heritage) states that diversity and connectivity of natural features and the long term *ecological function* and biodiversity of *natural heritage* systems, should be maintained, restored or, where possible, improved. Policy 2.1.8 states that *development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features* and areas identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative*

*impacts* on the natural features or on their *ecological functions*. Policy 2.1.9 states that nothing in this policy (2.1) is intended to limit the ability of *agricultural uses* to continue.

Policy 2.6.2 states *development* and *site alteration* shall not be permitted on lands containing *archaeological resources* or *areas of archaeological potential* unless significant *archaeological resources* have been *conserved*.

The subject lands are situated within the Coyle Creek Subwatershed, above a highly vulnerable aquifer according to Schedule B1 as well as being impacted by the presence of a *PSW (Provincially Significant Wetland)*, *significant woodland*, advisory floodplain and type 2 important fish habitat (see Figure 1). No Environmental Impact Assessment or Archaeological Assessment was submitted in support of the proposed application.

*Figure 1: Subject lands with approximate location of natural heritage features*



The (Christmas tree) farming operation takes place on the east side of the watercourse where there are no environmental constraints. The proposed barn is situated on the west side of the subject lands, near the existing quonset hut / dwelling, nestled in between the PSW and floodplain.

#### Growth Plan for the Greater Golden Horseshoe (2019)

This Plan informs decision-making regarding growth management and environmental protection in the Greater Golden Horseshoe (GGH). All decisions made after May 16, 2019 that affect a planning matter will conform with this Growth Plan, subject to any legislative or regulatory provisions providing otherwise. The policies of this Plan take precedence over the PPS to the extent of any conflict.

Policy 4.2.2.3 a) states that (among other things), within the *Natural Heritage System* new development or site alteration will demonstrate that there are no negative impacts on key natural heritage features, key hydrologic features or their functions.

Policy 4.2.2.3 b) states that the full range of existing and new *agricultural uses* are permitted. However, new buildings for *agricultural uses* are not subject to policy 4.2.2.3 a), but are subject to the policies in subsections 4.2.3 and 4.2.4.

Policy 4.2.3.1 e) states that expansions to existing legal accessory buildings which bring the use more into conformity with this Plan, subject to demonstration that the use does not expand into the *key hydrologic feature* or *key natural heritage feature* or *vegetative protection zone* unless there is no other alternative, in which case any expansion will be limited in scope and kept within close geographic proximity to the existing structure.

Town Planning staff are of the opinion that multiple alternatives exist to allow the proposed barn to be erected well outside of any sensitive natural heritage features or their associated buffers or *vegetation protection zones*. The property has ample land capacity east of the floodplain to allow for the barn to be built, without the need for zoning relief, and in much closer proximity to the agricultural use which it would serve. This directly benefits the agricultural needs of the property by avoiding the need to traverse a long (300 + metre), indirect driveway over a type two fish habitat, floodplain, *significant woodland* and beyond the existing residential dwellings.

Policy 4.2.4 b) states that new agricultural uses will not be required to undertake a natural heritage evaluation (EIS) or hydrologic evaluation if a minimum 30 m *vegetation protection zone* is provided from a *key natural heritage feature* or *key hydrologic feature*. However, agricultural uses are only exempt from the requirement of establishing a condition of *natural self-sustaining vegetation* if the land is, and will continue to be used for agricultural purposes and will pursue best management practices to protect and restore *key natural heritage features*, *key hydrologic features*, and their functions.

Upon visiting the site, Planning staff witnessed no evidence of current, or past agricultural activity in the vicinity surrounding the quonset hut (see Figure 2).

*Figure 2: Existing quonset hut / proposed location of barn*





Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as ‘Good General Agricultural Area’, ‘Environmental Protection Area’, ‘Environmental Conservation Area’ and important ‘Fish Habitat’.

Policy 10.C.2.1.13 states that *development* and *site alteration* shall only be permitted on lands containing *archaeological resources* or *areas of archaeological potential* if the significant *archaeological resources* have been *conserved* by removal and documentation, or by preservation on site.

Policy 7.B.1.27 states that new farm buildings are permitted within Environmental Conservation Areas and lands adjacent to a Core Natural Heritage System Component as identified in Table 7-1, subject to other Regional Official Plan policies and the following provisions:

- a) If the proposal is small in scale, and it has been demonstrated that there is no reasonable alternative, that the proposal is directed away from the feature to the maximum extent possible and negative impacts on the natural feature and *ecological functions* have been minimized; or
- b) If the proposal is large in scale, involving a major *intensification* in land use or a major increase in land area, it is subject to policies 7.B.1.10 to 7.B.1.12, 7.B.1.15 to 7.B.1.16 and 7.B.1.26.

As referenced above, there are alternative locations on the subject lands that the proposed farm building could consider being relocated that would be less impactful on the natural heritage system. Furthermore, there is the question of building scale; the proposed barn is over five (5x) times larger than the existing quonset hut to be removed. No rationale has been provided as to why such a large structure is required for the agricultural operation in such a remote location from actual farming activities. Also, it does not appear that the lands have been actively farmed for a number of years.

Pelham Official Plan (2014)

The Town of Pelham Official Plan is the primary planning document that will direct the actions of the Town and shape growth that will support and emphasize Pelham's unique character, diversity, cultural heritage and protect our natural heritage features.

The local Official Plan designates the subject land as 'Good General Agricultural', 'Environmental Protection One' (EP1) and 'Environmental Protection Two' (EP2) as per Schedule 'A'. Furthermore, Schedule 'B' also identifies a *significant wildlife habitat* and *Provincially Significant Wetland* on the subject land.

Policy B2.1.1 states the purpose of the *Good General Agricultural* designation is to protect and maintain land suitable for agricultural production and permit uses which are compatible with agriculture.

Policy B3.2.4.3 Adjacent Lands to EP1 Designation – states no development or site alteration shall be permitted within 120 m of the boundary of a PSW unless an EIS (Environmental Impact Statement) demonstrates that there will be no negative impact on the feature or its ecological functions. The Region, in consultation with the Town and NPCA shall approve any EIS prepared to address impacts on development or site alteration within adjacent lands.

Policy D4.3 Archaeological Resources – states that Council recognizes that there are archaeological remnants of pre-contact and early historic habitation as well as archaeological potential areas within the Town. Council shall require archaeological assessments and the preservation or excavation of significant archaeological resources in accordance with Provincial guidelines, requirements and protocols.

Based on the Town's Heritage Master Plan, the subject lands are identified as having high potential for deeply buried archaeological material. No Archaeological Assessment was submitted with the application but it has been identified as a condition of approval, should the Committee of Adjustment decide in favour of the proposal.

Policy E1.5 (Minor Variances) – states that applicants should be prepared to demonstrate a need for the requested zoning relief on the basis that the subject zoning provision is not warranted in a particular circumstance, causes undue hardship, or is otherwise impossible to comply with.

The Planning Justification Brief submitted with the application only addressed the *4 tests* under the *Planning Act*.

Pelham Zoning By-law No. 1136 (1987), as amended

The subject land is zoned 'Agricultural' (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. Under the default regulations of the Zoning By-law, the minor variance application requests relief from:

- i. **Section 7.2 (e) "Minimum Side Yard"** to permit a minimum side yard of 3 m, whereas 46 m is required for an agricultural barn.

The Committee of Adjustment, in Section 45 (1) of the *Planning Act*, may authorize a minor variance from the provisions of the by-law, subject to the following considerations:

Minor Variance Test	Explanation
1. The variance is minor in nature.	The proposed reduced side yard setback for a 961 m <sup>2</sup> (10,344 ft <sup>2</sup> ) barn is not considered minor overall given the scale of the building footprint in relation to its location. Especially concerning is the barn's proximity within, and adjacency to sensitive key natural heritage features, the neighbouring lot to the north, and the long (300+ m) indirect route to suitable agricultural land. Notwithstanding the portions of woodland that would be needed for removal to accommodate the area of proposed disturbance, better alternatives exist further east on the subject lands.
2. The variance is desirable for the development or use of the land.	<p>Town Planning staff are of the opinion the proposed variance is not desirable for the agricultural use of the property given its long distance to the farmable land. The proposed barn would be over 300 metres away from the tree nursery via an indirect driveway that would cross a floodplain and pass by residential dwellings.</p> <p>No rationale was provided with respect to the need for such a large farm building in this location for a Christmas tree farming operation, notwithstanding what appears to be an inactive nursery operation.</p>
3. The variance maintains the general intent and purpose of the Official Plan.	<p>The proposed use of a farm building is permitted in the 'Good General Agricultural' designation of the Official Plan and the policy does permit / encourage agricultural uses. However, given the proposed location of the large 961 m<sup>2</sup> (10,344 ft<sup>2</sup>) barn, the requested side yard setback reduction may compromise the objectives of the Official Plan, particularly with respect to negative environmental impacts, storm water runoff and private sewage system servicing capabilities. The Region has indicated the need for a septic system design to be reviewed by their office for the proposed barn, in connection with a lack of usable land area to service the residences.</p> <p>Given the high potential for discovery of archaeologically significant resources, without the benefit of an archaeological assessment confirming otherwise, this size of building is considered to conflict with Policy D4.3. However, pending a Ministry archaeological clearance resulting from an Archaeological Assessment, this would conform with the Official Plan. As a result, in the event of approval, Town and Regional staff have recommended an archaeological assessment / Clearance as a condition of approval.</p> <p>Town Planning are of the opinion the proposed variance conflicts with the general intent and purpose of the Official Plan for the reasons outlined above and earlier in this report.</p>
4. The variance maintains the general intent and purpose of the Zoning By-law.	Assuming stormwater runoff can be adequately conveyed such that no adverse impacts are caused on neighbouring properties, and no other land use incompatibility concerns are evident upon adjacent

	lands, Town Planning staff are of the opinion the general intent and purpose of the Zoning By-law is maintained.
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### Agency & Public Comments

On August 12, 2020, a notice of public hearing was circulated by the Secretary Treasurer of the Committee of Adjustment to applicable agencies, Town departments, and to all assessed property owners within 60 metres of the property's boundaries.

To date, the following agency and staff comments have been received:

- Niagara Peninsula Conservation Authority (August 23, 2020)
  - See attached.
  - No objection subject to appropriate sediment and erosion control fencing being installed around the proposed construction site.
- Niagara Region Planning & Development Services (August 20, 2020)
  - See conditions and see attached.
- Building Department (August 19, 2020)
  - Building permits are required.
- Public Works Department (August 19, 2020)
  - Requesting a comprehensive, localized Lot Grading Plan & Drainage Plan be submitted, ensuring the finished grades will not negatively impact adjacent properties.

To date, the following public comments have been received:

K. & C. Granatier

- Object to the proposal because of the intent of the Zoning By-law not being maintained and possible negative impacts to their adjacent property.
  - See response for minor variance *test* for maintaining purpose of Zoning By-law.

V. Labbe

- Requests that,
  - The barn maintain a 30 m setback from the wetland (PSW), and that the PSW boundary be reviewed by both the NPCA and Region, in consultation with the Ministry of Natural Resources (MNRF), during the appropriate season (May to October).
    - The proposed barn is outside of the 30 m PSW buffer on the Topographic Survey and both the NPCA and Region did not request the mapping be reviewed with the MNRF.
  - A Water Management Plan be provided to the satisfaction of the NPCA and Region to ensure that drainage will not pollute the PSW or cause rill erosion.
    - NPCA and Regional staff
  - Buffer enhancements be considered to offset the impact to the PSW and that the buffer remain wooded.
  - The derelict vehicles parked near the western property line be moved so that they maintain a 30 m setback from the PSW.
  - It be noted that the Site Plan incorrectly labeled the *in-ground pool* as 'proposed', when it is 'existing'.
  - Should the proposal be approved, that a silt fence, and any other appropriate sediment and erosion controls be required prior to construction commencing.

B. DiMartile



- Supports the proposal.

### Planning Staff Comments

The subject lands are located on the north side of Chantler Road, lying east of Effingham Street. The property is currently surrounded by agricultural uses, various natural heritage features and several rural residential dwellings (see Figure 1).

The proposed minor variance application seeks zoning relief to reduce the minimum side yard setback for an agricultural building from 46 m, to 3 m in order to accommodate a barn for an existing Christmas tree farm.

Town staff visited the subject lands to better understand the existing quonset hut, proposed development site, and existing agricultural operation. The existing quonset hut is currently being used for the storage of domestic vehicles (see Figure 2), and does not appear to remotely support any farming operation. The lands west of the watercourse / floodplain show no evidence of any farming activity and only support the rural residential use of the lands. It should also be noted that the existing quonset hut is partly located below the 180 m elevation which mean encroachment upon the advisory floodplain.

The larger, eastern half of the property is the only lands not directly impacted by any designated natural heritage features and capable of agricultural crop or tree nursery farming. Although after visiting the existing tree nursery, it is evident that the original plantation has been growing uncontrolled for over two (2) decades, and is largely indistinguishable with heavy secondary undergrowth. Based on orthographic aerial imagery dating back to the year 2000, there appears to be little evidence of an active tree farming operation, however the topsoil extraction activities taking place on the lands do show some continued activity. No improvements have been made to the lands that would suggest any agricultural activities are being reinstated on the lands.

*Figure 3: Eastern half of subject lands (including Christmas tree nursery)*





It should be noted that Niagara Region staff provided comments based on the original *Notice of Hearing* which incorrectly noted a proposed mobile farm help house. A revised *Notice of Hearing* was circulated but despite following up with Regional staff, Town staff did not receive their revised comments at the time of writing this Report. The Committee should note that some of their comments do not directly relate with the proposed barn, and that the proposed mobile farm help house is not part of this application.

In the event of approval, Town Planning staff will be recommending a condition for the completion of an archaeological assessment to be submitted to the Ministry of Heritage, Sport, Tourism & Culture for a standard Clearance Letter prior to issuance of a building permit.

In Planning staff's opinion, the application is inconsistent with the PPS, Growth Plan and does not conform to local Official Plan, does not meet all *four tests* under the *Planning Act* and does not represent sound land use planning.

Given this analysis, Planning staff recommend that minor variance file A6/2020P **be refused**.

However, should the Committee of Adjustment decide to approve the minor variance, Town staff request the following conditions be required:

**THAT** the applicant

- Conduct a Tree Preservation Plan (TPP) in accordance with the Niagara Region Tree and Forest Conservation By-law, submitted for approval prior to the issuance of building permit to the satisfaction of the Director of Community Planning & Development. Implementation of the TPP shall be authorized and monitored by a Registered Professional Forester (RPF) of Ontario.
- Conduct a Stage 1-2 Archaeological Assessment prepared by a licensed archaeologist and receive clearance from the Ministry of Heritage, Sport, Tourism & Culture prior to the issuance of a building permit. The Archaeological Assessment must cover the areas of the site proposed for disturbance, and be accepted by the Ministry prior to clearance of this condition. The licensed archaeologist may recommend further archaeological analysis or preservation steps be taken. No demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements; or
- Submit a comprehensive, localized Lot Grading & Drainage Plan ensuring the proposed structure and finished grades will not negatively impact adjacent properties, and that existing overland flow patterns are maintained to ensure surface water runoff to the adjacent wetland is maintained, to the satisfaction of the Director of Public Works.
- Install appropriate sediment and erosion control fencing around the development site prior to building permit issuance, to be maintained in good condition for the duration of construction until all disturbed surfaces have been stabilized. Muddy water shall not be allowed to leave the construction site and fencing measures must be monitored regularly to ensure they are functioning properly and promptly fixed if issues are identified.
- Ensure any required vegetation removal be conducted in a manner to avoid impacts to nesting birds that may be utilizing habitats on the property. The breeding bird period for this area is generally between March 15<sup>th</sup> to August 31<sup>st</sup>. A survey for active bird nests should be conducted prior to any

vegetation removal or site alteration planned to occur during this window. Any site alteration works should be phased to avoid impacts to active nests until the nestlings have fully fledged.

- Ensure any stockpiled materials be stored and stabilized away from the trees to be retained.
- Ensure that tree and vegetation removal be minimized where possible and where grading permits.

Prepared by,



Curtis Thompson, B.URPI  
Planner

Approved by,



Barb Wiens, MCIP, RPP  
Director of Community Planning & Development